

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:08-CR-13-1-D

UNITED STATES OF AMERICA)
)
 v.)
)
GARRY DESHAWN SCRIVEN,)
)
 Defendant.)

ORDER

Pursuant to Rule 32(h) of the Federal Rules of Criminal Procedure and relevant Fourth Circuit precedent, this court provides notice that it is contemplating an upward departure from the advisory guideline range calculated in the defendant's Presentence Investigation Report ("PSR"). See, e.g., United States v. Dalton, 477 F.3d 195, 197–99 (4th Cir. 2007). The grounds for this possible upward departure include that the defendant's criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, and that the defendant's offense level under-represents the actual seriousness of the defendant's offense because certain dismissed or uncharged conduct did not enter into the determination of the defendant's advisory guideline range. See, e.g., U.S. Sentencing Guidelines Manual §§ 4A1.3(a) & 5K2.21 (2007); United States v. Cash, 983 F.2d 558, 560–63 (4th Cir. 1992); United States v. Rusher, 966 F.2d 868, 884–85 (4th Cir. 1992); United States v. Gill, 228 F. App'x 282, 286 (4th Cir. 2007) (per curiam) (unpublished); cf. PSR ¶¶ 7–10, 13.

SO ORDERED. This 18th day of July 2008.



JAMES C. DEVER III
United States District Judge